

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

KENEL JOSEPH,

Plaintiff,

v.

Case No.: 2:23-cv-578-SPC-NPM

K. WILLIAMS,

Defendant.

\_\_\_\_\_ /

**OPINION AND ORDER**

Before the Court is Plaintiff Kenel Joseph's Emergency Motion to Strike the Previous Amendment to This Case (Doc. 20), which the Court construes as a motion for leave to file a second amended complaint. Joseph asks the Court to strike his first amended complaint and accept the second amended complaint he filed with the motion. The Court has already dismissed this action based on the first amended complaint and entered judgment. Joseph constructively filed his motion and second amended complaint before dismissal by delivering them to prison officials for mailing.

Under Federal Rule of Civil Procedure 15(a)(2), courts "should freely give leave when justice so requires." Justice does not require leave to amend here. Joseph attempts to state a claim against Classification Officer K. Williams under 42 U.S.C. § 1983. To state a § 1983 claim, a plaintiff must allege that

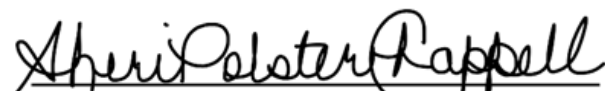
(1) the defendant deprived him of a right secured under the Constitution or federal law, and (2) the deprivation occurred under color of state law. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (citing *Arrington v. Cobb Cnty.*, 139 F.3d 865, 872 (11th Cir. 1998)). Joseph alleges Williams failed to follow Florida Department of Corrections rules after Joseph was caught with cocaine. Accepting these allegations as true, Joseph does not state a plausible violation of federal law. Thus, reopening the case for Joseph's second amendment complaint would be futile.

Accordingly, it is now

**ORDERED:**

Plaintiff Kenel Joseph's Emergency Motion to Strike the Previous Amendment to This Case (Doc. 20) is **DENIED**.

**DONE** and **ORDERED** in Fort Myers, Florida on September 19, 2023.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

SA: FTMP-1

Copies: All Parties of Record